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In the
SUPREME COURT OF THE UNITED STATES

October Term 1978

No. 78-990

UNITED STATES OF AMERICA

Petitioner

v.

CLIFFORD BAILEY, et al.

Respondents.

UNITED STATES OF AMERICA

Petitioner

v.

JAMES T. COGDELL

Respondent.

On Petition For a Writ of Certiorari to the
United States Court of Appeals for the
District of Columbia Circuit

BRIEF IN OPPOSITION FOR RESPONDENT COGDELL

DOROTHY SELLERS

1801 K Street, N.W.
Suite 1100
Washington, D.C. 20006
(202) 833-3700

Counsel for Respondent Cogdell
(Appointed by the United States
Court of Appeals for the
District of Columbia Circuit)

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INTRODUCTION

The two "Questions Presented" in the government's petition for certiorari deal with the substantive law of escape (Pet. 2). In opposition to granting the writ on these questions, respondent[1/] adopts in full the brief in opposition filed by respondent Walker. Accordingly, this brief does not contain a "reasons for denying the writ" analysis.

The remainder of this brief will address the jurisdictional issues raised in respondent's cross-petition for certiorari (filed December 15, 1978).

OPINION BELOW

The opinion of the court of appeals in respondent's case has been reported at 585 F.2d 1130 (D.C.Cir. 1978).

QUESTION PRESENTED

Whether respondent was subject to federal prosecution under 18 U.S.C. §751(a) for escaping from the D.C. Jail when (1) respondent was at all times a Virginia state prisoner and was not convicted of any District of Columbia or federal offense; (2) respondent was free on bond in the criminal proceeding in which he was under indictment in the Superior Court of the District of Columbia; (3) respondent was in the District of Columbia solely by virtue of a writ of habeas corpus ad prosequendum issued by the

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1/ For purposes of this brief, the word "respondent" standing alone will refer only to respondent James T. Cogdell. Reference to any other respondent will include the surname, as, for example, "respondent Walker".

Superior Court for a status conference in the District of Columbia criminal proceeding; and (4) the status conference concluded on August 17, 1976 and the escape occurred on August 26, 1976.

STATUTES INVOLVED

1. 18 U.S.C. §751(a)
2. 21 U.S.C. §1651
3. 28 U.S.C. §2241
4. 11 D.C. Code §921(a)(3)(A)(iii) (1973)
5. 16 D.C. Code §1901 (1973)

These statutes are set out in the appendix to this brief with the exception of 18 U.S.C. §751(a), which appears in the government's petition at 2-3.

STATEMENT OF THE CASE

The federal escape statute -- 18 U.S.C. §751(a) -- comprises four separate offenses.[2/] Respondents Bailey, Cooley and Walker were each indicted for the first of these offenses -- escape from the custody of the Attorney General. In significant contrast, respondent was indicted for the third escape offense -- escape from custody by virtue of process issued under the laws of the United States. Splicing together §751(a) to reflect respondent's situation, he was accused of escaping "from any custody under or by virtue of any process issued under the laws of the United States by any court, judge or magistrate . . . if the custody or confinement is by virtue of an arrest on a charge of felony, or conviction of any offense. . . ."[3/]

The facts of this case must be viewed with the goal of answering the primary question inherent in this statutory language: What custody was respondent in at the time of the escape?

At the time of the escape, respondent was not under conviction for any federal or District of Columbia offense. Although he was under indictment in the District of Columbia, he was free on pretrial bond (Tr. May 6, 1976 at 6). At the time of the escape, respondent had been convicted of a felony in the Circuit Court of Fairfax County, Virginia. On August 17, 1976, respondent was transferred from the Fairfax County Jail where he was incarcerated for sentencing to the Superior Court for a status conference (Pet. 102; 108). The transfer was effected by a writ of habeas corpus ad prosequendum issued by the Criminal Division of the Superior Court (Pet. 108). The writ -- addressed jointly to the Superintendent of the Fairfax County Jail, the United States Marshal for the District of Columbia, and the United States Marshal for the Eastern District of Virginia -- contained two directives. First, respondent was to be produced at the status hearing in Superior Court. Second, at the conclusion of

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2/ They are escape or attempted escape (1) from the custody of the Attorney General; (2) from an institution where the defendant is confined by direction of the Attorney General; (3) from any custody under or by virtue of any process issued under the laws of the United States; and (4) from the custody of an officer or employee of the United States pursuant to lawful arrest.

3/ The indictment somewhat altered the statutory language. The federal count of both the original and retyped indictment charged:

> "On or about August 26, 1976, within the District of Columbia, James T. Cogdell, having been in the custody under and by virtue of a commitment issued under the laws of the United States by a judge of the Superior Court of the District of Columbia following his arrest on a charge of a felony, did unlawfully and wilfully flee and escape from such custody.
> (Violation of Title 18, U.S.Code, Section 751(a))."

the status hearing, respondent was to be returned "to the custody from whence he came" (Govt. Ex. 3).[4/]

Respondent appeared at the status conference on August 17, 1976. Despite the language of the writ, and despite the bench ruling of the Superior Court judge that appellant was to be "promptly" returned to the Fairfax authorities,[5/] respondent was

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4/ The writ contains the Superior Court (Criminal Division) caption and is signed by a judge of the Superior Court. The text provides:

WRIT OF HABEAS CORPUS AD PROSEQUENDUM

THE PRESIDENT OF THE UNITED STATES

TO: Superintendent, Fairfax County Jail
United States Marshal for the District of Columbia
United States Marshal for the Eastern District of Virginia

GREETINGS:

You are hereby commanded to produce the body of JAMES T. COGDELL by you imprisoned and detained as it is said, to either the United States Marshal in and for the District of Columbia or the United States Marshal in and for the Eastern District of Virginia, or one of their authorized deputies, so he may produce the said JAMES T. COGDELL under safe and secure conduct, before the Superior Court of the District of Columbia on August 17, 1976 so that a status hearing may be held in the above captioned case in this Court, and then, upon the conclusion of such proceedings, be returned by either of the aforementioned United States Marshals, or a deputy thereof, to the custody from whence he (she) came and have then and there this writ.
(Govt. Exh. 3)

5/ The Superior Court transcript reflects the following colloquy:

THE COURT: Okay. I suppose we have to get a motions hearing date. So when after the 20th would you like to have it? We could have it, say, the 26th at five o'clock. Do we need a writ each time to get Mr. Cogdell here?

MR. STROUD [A.U.S.A.]: We do, Your Honor.

. . .

THE COURT: The motion is set for five o'clock on Thursday. The bond in this case has already been set, which the gentleman has made. It will remain. Make sure that we have the writs and so on necessary if he is not in our jurisdiction to have the gentleman here.

(Footnote continued on next page)

taken to the D.C. Jail. He had not been returned to Fairfax by August 26, 1976, the date of the escape.

REASONS FOR GRANTING THE CONDITIONAL CROSS-PETITION

The issue which respondent proposes to raise by cross-petition is a substantial one. Granting the cross-petition will afford this Court the opportunity to review the entire case and to correct an error of the court of appeals. The relevant circuit court opinions are in a state of confusion and conflict. In view of the frequency with which state prisoners appear in federal courts (and federal prisoners in state courts) pursuant to writs of habeas corpus ad prosequendum or ad testificandum, resolution

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(Continuation of footnote from previous page)

MR. SHORTER [Defense Counsel]: Yes. May I request some assistance through the Court concerning Mr. Cogdell? The last time Mr. Cogdell was here, I think for arraignment, the Marshals didn't return him to Fairfax for at least 15 days --

MR. COGDELL: Three weeks.

MR. SHORTER: And Mr. --

THE COURT: I don't even have the writ -- I think he ought to go back promptly. Fairfax isn't that far away.

MR. SHORTER: Mr. Stroud made efforts at my request to have the defendant returned promptly, but the Marshal's office, Your Honor, was just a little slow in doing it. We understood he was going back the same date.

THE COURT: Well, I will ask one of the Marshals assigned to the Court to kind of keep track of it and let me know sometime tomorrow where Mr. Cogdell is in the system. If there is a hangup, I'll get direct feedback tomorrow. So the problem -- hopefully, he will go back today. If not, I will be able to find out tomorrow and perhaps take some remedial action then.

MR. SHORTER: Thank you, Your Honor.

(Tr. Superior Ct. Crim. No. 58609-76 at 34) (emphasis added).

of the cross-petition issue will have an impact well beyond this case.

1. The fact that respondent was incarcerated in the District of Columbia Jail is solely and directly attributable to the fact of his Virginia conviction. Respondent was not incarcerated by virtue of the pendency of the District of Columbia criminal action. Exactly the opposite: that action had produced his release on bond. Indeed, were it not for the Virginia conviction, respondent could have departed the Superior Court status conference on August 17, 1976 without restraint.

The government successfully argued in the court of appeals that respondent was in federal custody because the writ of habeas corpus ad prosequendum was both the source of custody and a form of process under the laws of the United States. (Govt. Br. in Ct.App. at 6-13 and 22; Pet. 104a-107a). This argument is twice flawed. First, it misconstrues the nature of a writ of habeas corpus ad prosequendum. Second, it ascribes the writ-granting authority of the Superior Court to the laws of the United States rather than to the District of Columbia Code.

A writ of habeas corpus ad prosequendum is not an independent source of custody. Rather, it simply acts to conserve the custody of the sending jurisdiction. Strangely, since deciding respondent's case, the court below has recognized precisely this point:

> When an accused is transferred pursuant to a writ of habeas corpus ad prosequendum he is considered to be "on loan" to the federal authorities so that the sending state's jurisdiction over the accused continues uninterruptedly. Failure to release a prisoner does not alter that "borrowed" status, transforming a state prisoner into a federal prisoner.
> Clifton Crawford v. Delbert C. Jackson, U.S.App.D.C. #78-1096, decided November 22, 1978.

Even more strangely, in the companion case of respondents Bailey, Cooley, and Walker, the court below decided that

prisoners transferred by virtue of a writ of habeas corpus ad testificandum[6/] remain in the custody of the sending jurisdiction by virtue of the original conviction:

> In addition to protecting the interest of the sending jurisdiction, holding that prisoners transferred by writs of habeas corpus ad testificandum are still in custody "by virtue of" the original commitment makes intuitive sense. The writ of habeas corpus ad testificandum is necessary only because the prisoner is already in custody elsewhere; the prisoner is kept confined when he is not testifying essentially because of the previous commitment; and any time during which the prisoner is confined under the writ counts toward satisfying the prisoner's original sentence. (Pet. 33a-34a).

Other federal courts have reached by a different route the identical conclusion as to the non-custodial nature of writs of habeas corpus ad prosequendum. These courts label the custody engendered by a writ of habeas corpus ad prosequendum as mere physical custody, which does not support federal jurisdiction under 18 U.S.C. §751(a), and distinguish it from legal custody, which does support such jurisdiction. United States v. Puncsak, 146 F.Supp. 523 (D.Alaska 1956); United States ex rel. Strewl[7/] v. Warden of Clinton Prison, 21 F.Supp. 502 (N.D.N.Y. 1937).

6/ For purposes of this discussion, there is no need to distinguish between writs of habeas corpus ad prosequendum and writs of habeas corpus ad testificandum.

7/ Petitioner in Strewl was convicted of a federal offense prior to the expiration of his state term of imprisonment. He sought a writ of habeas corpus directing his transfer to federal prison from the state prison on the theory that he was a federal rather than a state prisoner. The federal court rejected his theory, stating:

> Even if [the state prisoner] had been turned over to the physical custody of the United States marshal, he would nevertheless still be in custody of the state courts in contemplation of law. The state authorities have no right to surrender custody of a state prisoner. If they should actually do so, it would not be a surrender of the legal custody of the prisoner, for under the law he still remains a state prisoner.

(Footnote continued on next page)

Proof of the fact that respondent was in custody by virtue of the Virginia conviction rather than by virtue of the writ of habeas corpus ad prosequendum is demonstrated not only by the cases cited above but by two additional facts. First, as noted by the court of appeals in its decision in the companion cases, the time spent in the requesting jurisdiction under a writ of habeas corpus ad testificandum (and, presumably, a writ of habeas corpus ad prosequendum) is counted toward service of the sentence imposed by the sending jurisdiction (Pet. 34a). Second, had respondent sought a writ of habeas corpus attacking his confinement in the D.C. Jail, the writ could have been directed only to the Fairfax County jailor. Pelley v. Matthews, 82 U.S. App.D.C. 264, 163 F.2d 700 (1947), cert. denied 332 U.S. 811.

In summary, respondent was in custody on August 26, 1976, but he was not in custody by virtue of the Superior Court writ of habeas corpus ad prosequendum. For purposes of the "custody under or by virtue of" language of the statute and indictment,[8/] respondent was in custody under and/or by virtue of the Virginia conviction.

Respondent submits that this analysis, by itself, compels the conclusion that the district court lacked jurisdiction over respondent's escape. In addition, there are two "even if"

(Continuation of footnote from previous page)

> This court recognized the superior right of the state court to the [state prisoner's] custody, for its writ of habeas corpus ad prosequendum provided that upon completion of the trial, he should be returned to the respondent and the state prison in which he was confined under mandate of the state court.
> (Strewl v. Warden of Clinton Prison, supra, 21 F.Supp. at 504).

8/ The indictment substitutes "and" for the statutory "or" in this phrase.

arguments which fortify this conclusion. First, even if respondent had been in custody by virtue of the writ of habeas corpus ad prosequendum during the transfer from Fairfax to the District of Columbia, that custody expired at the conclusion of the August 17, 1976 status call necessitating the writ. The conclusion of that proceeding effected a remand to the custody of the sending authority. United States v. Viger, 530 F.2d 846 (9th Cir. 1976); United States v. Stead, 528 F.2d 257 (8th Cir. 1975) cert. denied 425 U.S. 953 (1976).

Second, even if respondent were in custody on August 26, 1976 by virtue of the writ of habeas corpus ad prosequendum, there is a very serious question whether that writ qualifies as process "issued under the laws of the United States" as the statute and indictment require. The court of appeals accepted the government's argument that the writ was issued under the All Writs Act, 28 U.S.C. §1651 and was therefore issued under the laws of the United States (Pet. 104a-107a). Respondent's position is that such a holding is unwarranted in light of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (Pub.L.No. 91-358, 84 STAT. 473) (the "Court Reform Act").

Carbo v. United States, 364 U.S. 611 (1961) contains an exhaustive history of all congressional legislation dealing generally with the writ of habeas corpus and specifically with the writ of habeas corpus ad prosequendum. To briefly summarize that history, §14 of the First Judiciary Act (1789) conferred authority on "all the . . . courts of the United States . . . to issue writs of scire facias, habeas corpus, and all other writs not specifically provided for by statute . . . ." Carbo at 614. Upon revision of the federal statutes in 1874, the general power of the federal courts to issue writs of habeas corpus was removed from

the language of the then-existing statute derivative from the all writs portion of §14 of the First Judiciary Act and was reinserted in three reorganized sections of the Revised Statutes dealing specifically with habeas corpus. Carbo at 615-616. These three reorganized sections of the Revised Statutes were recodified in 1948 as the three subsections of 28 U.S.C. §2241 and "for the first time in the legislative history of the writ of habeas corpus there was made explicit reference to the writ ad prosequendum in statute." Carbo at 619.

Thus, since 1874, Congress had maintained two separate lines of writ-granting authority; one (now 28 U.S.C. §2241) relating specifically to the generic writ of habeas corpus (including the ad prosequendum species) and a second (now 28 U.S.C. §1651) relating to all other writs "agreeable to the usages and principles of law".

The Superior Court is empowered to grant writs under §1651 but not under §2241.[9/] The question respondent raises is whether the Superior Court's writ-granting authority under §1651 includes the authority to issue writs of habeas corpus ad prosequendum. The court of appeals answered this question affirmatively, relying on United States v. Hayman, 342 U.S. 205 (1952), Price v. Johnson, 334 U.S. 226 (1948), and an enigmatic reference to Moore's Federal Practice. (Pet. 106a).[10/] Respondent submits

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9/ This is because the writ-granting authority conferred by Congress in §1651 extends to "the Supreme Court and all courts established by Act of Congress", thereby including the Superior Court of the District of Columbia, whereas the writ-granting authority conferred by §2241 extends only to "the Supreme Court, and a justice thereof, the district courts and any circuit judge within their respective jurisdictions", thereby excluding the Superior Court of the District of Columbia.

10/ The holding of the court of appeals on this question has been followed by the District of Columbia Court of Appeals in United States v. Palmer, 393 A.2d 143 (1978).

that the court of appeals has misinterpreted the law in this area. In Carbo, supra, 364 U.S. at 621 and n.21, the Court characterized the very cases on which the court of appeals relied as cases "in which habeas corpus was not even involved."[11/] Moreover, the holding of the court of appeals creates the anomalous situation that the Superior Court -- and only the Superior Court -- may issue writs of habeas corpus ad prosequendum under the All Writs Act. This occurs because the All Writs Act is clearly inapplicable to state courts, and, as noted earlier, federal courts issue all writs of habeas corpus pursuant to 28 U.S.C. §2241.

This anomaly is all the more peculiar in view of the habeas corpus authority conferred on the Superior Court by the Court Reform Act. Specifically, the Court Reform Act accorded the Superior Court jurisdiction "relating to writs of habeas corpus directed to persons other than federal officers and employees". 11 D.C.Code 921(a)(3)(A)(iii). This authority was codified in new subsection (c) of 16 D.C.Code §1901.[12/] Although §1901 refers generally to writs of habeas corpus and not specifically to writs of habeas corpus ad prosequendum, the generic language necessarily includes the ad prosequendum writ as well as the Great Writ. Ex parte Bollman, 4 Cranch 75, 2 L.Ed. 544 (1807) (per Chief Justice Marshall).

11/ To the same effect is the dissent in Carbo at 364 U.S. 624 n.2.

12/ Subsections (b) and (c) of 16 D.C.Code §1901 were part of the Court Reform Act and provide:

(b) Petitions for writs directed to Federal officers and employees shall be filed in the United States District Court for the District of Columbia.

(c) Petitions for writs directed to any other person shall be filed in the Superior Court of the District of Columbia.

The purpose of the Court Reform Act was to disentangle the state and federal judicial systems in the District of Columbia, thereby making the Superior Court more nearly comparable to a state court. To hold that the authority of the Superior Court to issue writs of habeas corpus ad prosequendum derives from the All Writs Act rather than from the D.C. Code defeats this purpose by needlessly conferring federal-based power on the Superior Court.

2. The question whether a prisoner transferred from one jurisdiction to another pursuant to a writ of habeas corpus ad prosequendum may be prosecuted for escape by the sending or receiving jurisdiction has engendered confusion among the courts of appeals. This results from a failure to identify which one of the four offenses defined by §751(a) is the basis for the prosecution and from a failure to identify whether the escape occurred before or after the conclusion of the legal proceeding necessitating the writ. United States v. Hall, 451 F.2d 347 (4th Cir. 1971) (three paragraph opinion affirming conviction under 18 U.S.C. §751(a): no indication of whether escape preceded court appearance); United States v. Farley, 424 F.2d 255 (4th Cir. 1970) (two paragraph opinion affirming conviction under 18 U.S.C. §751(a) without reference to specific escape offense; escape occurred during process of transporting prisoner to requesting jurisdiction and in advance of court appearance).

The decision by the court of appeals in respondent's case is inconsistent with its decision in the case of respondents Bailey, Cooley and Walker and with its decision in Clifton Crawford v. Delbert C. Jackson, supra. Moreover, the decision is inconsistent with the decision of the Eighth Circuit written by Justice Clark (sitting by designation) in United States v. Stead, 528 F.2d 257 (1975), cert. denied 425 U.S. 953 (1976). The fact situation in Stead is the mirror image of this case. Stead was a

federal prisoner at Marion, Illinois. He appeared in the Circuit Court of St. Louis County pursuant to its writ of habeas corpus ad testificandum. At the close of that proceeding, he was returned to the St. Louis County jail to await transportation back to Marion. Three weeks later he escaped from the St. Louis jail. The Eighth Circuit held that, at the time of the escape, Stead was in federal custody and not in the custody of the Missouri state officials:

> The mere fact that Stead was in the county jail when he escaped is of no consequence. The custody of the county jail was simply that of the federal officers under the circumstances here.
> United States v. Stead, supra, 528 F.2d at 258.

Mr. Justice Clark's reasoning in Stead controls this case: If Stead -- a convicted federal prisoner who escaped from the jail in which he was held pursuant to the writ -- was in federal custody at the time of the escape, then respondent -- a convicted state prisoner who escaped from the jail in which he was held pursuant to a writ -- was in state custody and not in federal custody at the time of the escape.

Stead also confirms respondent's theory that the delay in returning respondent to Fairfax terminated whatever custodial effect may be attributed to the writ of habeas corpus ad prosequendum. The writ in Stead provided that "after the [state court] proceeding, the defendant shall be returned forthwith" to the custody of the federal marshal and warden. That is the functional equivalent of the language of the writ in this case (and the language of the Superior Court judge on August 17, 1976). Stead holds that the completion of the court proceeding necessitating the writ -- without regard to whether the return trip is completed -- effects a remand to the legal custody of the sending authority. That portion of Stead is likewise inconsistent with the holding of the court of appeals in respondent's case.

CONCLUSION

For the reasons set forth in the brief in opposition of respondent Walker, respondent requests the court to deny the government's petition for a writ of certiorari. If, however, the court grants the government's petition, it should also grant respondent's cross-petition for a writ of certiorari.

Dorothy Sellers

1801 K Street, N.W.
Suite 1100
Washington, D.C. 20006
202/833-3700

Counsel for Respondent Cogdell

January 23, 1979

CERTIFICATE OF SERVICE

I hereby certify that on January 23, 1979, a copy of respondent Cogdell's brief in opposition was mailed, first class mail, postage prepaid to

Honorable Wade H. McCree, Jr.
Solicitor General of the United States
United States Department of Justice
Washington, D.C. 20537

Richard S. Kohn, Esquire
Suite 520
Woodward Bldg.
733 Fifteenth Street, N.W.
Washington, D.C. 20005

John Townsend Rich, Esquire
Shea & Gardner
734 Fifteenth Street, N.W.
Washington, D.C. 20005

Robert A. Robbins, Jr., Esquire
1518 R Street, N.W.
Washington, D.C. 20009

Dorothy Sellers

APPENDIX OF STATUTES INVOLVED

PART V—PROCEDURE

CHAPTER 111—GENERAL PROVISIONS

§ 1651. Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

As amended May 24, 1949, c. 139, § 90, 63 Stat. 102.

§ 1652. State laws as rules of decision

The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply.

§ 1653. Amendment of pleadings to show jurisdiction

Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts.

CHAPTER 153—HABEAS CORPUS

§ 2241. Power to grant writ

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus shall not extend to a prisoner unless—

(1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or

(2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or

(5) It is necessary to bring him into court to testify or for trial.

(d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

As amended May 24, 1949, c. 139, § 112, 63 Stat. 105; Sept. 19, 1966, Pub.L. 89-590, 80 Stat. 811.

§ 2242. Application

Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf.

It shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority, if known.

It may be amended or supplemented as provided in the rules of procedure applicable to civil actions.

If addressed to the Supreme Court, a justice thereof or a circuit judge it shall state the reasons for not making application to the district court of the district in which the applicant is held.

§ 2243. Issuance of writ; return; hearing; decision

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

used at subsequent trial for impeachment purposes. *Neely* v. *United States* (1944, 144 F. 2d 519, 79 U.S. App. D.C. 177, certiorari denied 65 S. Ct. 83, 323 U.S. 754, 89 L. Ed. 604).

Fees of witnesses and jurors

When witnesses and jurors are summoned by a lawful officer they are compelled to obey the writ and are entitled to their fees, advanced by the coroner, even though the inquest was unlawful. *Levy Court* v. *Woodward* (1864, 69 U.S. 501, 2 Wall. 501, 17 L. Ed. 831).

Judge pro tem

Judge pro tem was not disqualified from passing sentence because regular judge returned between time of trial and date set for sentencing. *Shore* v. *Splain* (1919, 258 F. 150, 49 App. D.C. 6).

Power to take testimony

A coroner may take testimony of probable defendants if it is given voluntarily after advice as to their rights and, in so doing, coroner does not act as a prosecuting officer, but sits in a quasi-judicial capacity. *Neely* v. *United States* (1944, 144 F. 2d 519, 79 U.S. App. D.C. 177, certiorari denied 65 S. Ct. 83, 323 U.S. 754, 89 L. Ed. 604).

Reduction of sentence

Municipal Court of District of Columbia had power to reduce sentences during term at which they were imposed. *Peden* v. *Fleming* (1946, 153 F. 2d 800, 81 U.S. App. D.C. 2).

Where Municipal Court of District of Columbia imposing sentence in August, 1942, directed that its term then current be kept open, the court could not extend the August, 1942, term until September 3, 1943, and could not at that time reduce sentences imposed more than a year before. *Id.*

Where order of probation was void because entered after defendant had been committed, release of defendant under the probation order was premature and it was duty of court to cause him to be recommitted, and the void probation order did not amount to an unconditional reduction of sentence. *Id.*

§ 11-907. Absence, disability, or disqualification of chief judge

(a) When the chief judge of the court is absent or disabled, his duties shall devolve upon and be performed by such associate judge as the chief judge may designate in writing. In the event that the chief judge is (1) disqualified or suspended, or (2) unable or fails to make such a designation, his duties shall devolve upon and be performed by the associate judges of the court according to the seniority of their original commissions.

(b) A chief judge whose term as chief judge has expired shall continue to serve until redesignated or until his successor has been designated. When there is a vacancy in the position of chief judge, the position shall be filled temporarily as provided in subsection (a). (July 29, 1970, Pub. L. 91-358, § 111, title I, 84 Stat. 483.)

§ 11-908. Designation and assignment of judges

(a) The chief judge may designate the number of judges to serve in any division and branch of the Superior Court and may assign and reassign any judge to sit in any division or branch. When making assignments to the Family Division and Tax Division, the chief judge shall consider the qualifications and interest of the judges. Each associate judge shall attend and serve in the division and branch to which he is assigned.

(b) When the business of the Superior Court requires, the chief judge may certify to the chief judge of the District of Columbia Court of Appeals the need for temporary assignment of an additional judge or judges as provided in section 11-707.

(c) Upon presentation of a certificate of necessity by the chief judge of the Superior Court, the chief judge of the United States Court of Appeals for the District of Columbia Circuit may designate and assign temporarily a judge or judges as provided in subsection (c) of section 292 of title 28, United States Code. (July 29, 1970, Pub. L. 91-358, § 111, title I, 84 Stat. 483.)

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 28, section 292, U.S. Code.

§ 11-909. Meetings and reports

(a) The judges of the Superior Court shall meet upon the call of the chief judge, but not less than once each month, to consider matters relating to the business and operations of the court. The court may by rule require additional meetings.

(b) Each associate judge shall submit to the chief judge such reports and data as the chief judge may request. Each judge shall submit a monthly written report to the chief judge and the Commission on Judicial Disabilities and Tenure which shall be in a form prescribed by the chief judge after consultation with the Commission and which shall set forth the duties performed by the reporting judge as follows:

(1) The number of days' attendance in court of the judge during the month covered.

(2) The division and branch (if any) of the court which he attended.

(3) The number of hours per day of his attendance.

(4) The number and type of matters disposed of by the judge during the months covered.

(5) Such other data as the chief judge may require. (July 29, 1970, Pub. L. 91-358, § 111, title I, 84 Stat. 483.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11-1730.

§ 11-910. Clerks and secretaries for judges

Each judge of the Superior Court may appoint and remove a personal law clerk and a personal secretary. (July 29, 1970, Pub. L. 91-358, § 111, title I 84 Stat. 484.)

SUBCHAPTER II.—JURISDICTION

§ 11-921. Civil jurisdiction

(a) Except as provided in subsection (b), the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia. Such jurisdiction shall vest in the court as follows:

(1) Beginning on the effective date of the District of Columbia Court Reorganization Act of 1970, the court has jurisdiction of any civil action or other matter begun before such effective date in the District of Columbia Court of General Sessions, the Juvenile Court of the District of Columbia, or the District of Columbia Tax Court.

(2) Beginning on such effective date, the court has jurisdiction of any civil action or other matter, at law or in equity, which is begun in the Superior Court on or after such effective date and in which the amount in controversy does not exceed $50,000.

(3) Beginning on such effective date, the court has jurisdiction (regardless of the amount in controversy) of any civil action or other matter, at law or in equity, which—

(A) is brought under—

(i) subchapter I of chapter 11 of title 16 (relating to ejectment);

(ii) subchapter II or III of chapter 13 of title 16 (relating to the condemnation of land on behalf of the District of Columbia);

(iii) chapter 19 of title 16 (relating to writs of habeas corpus directed to persons other than Federal officers and employees);

(iv) chapter 25 of title 16 (relating to change of name);

(v) chapter 33 of title 16 (relating to quieting title to real property);

(vi) subchapter II of chapter 35 of title 16 (relating to writ of quo warranto);

(vii) chapter 37 of title 16 (relating to replevin of personal property);

(viii) the Hospital Treatment for Drug Addicts Act for the District of Columbia (D.C. Code, secs. 24-601 through 24-611) (relating to commitment of narcotics users); or

(ix) section 2 of the Act of August 3, 1968 (D.C. Code, sec. 1-804b) (relating to contractors bonds).

(B) involves an appeal from or petition for review of any assessment of tax (or civil penalty thereon) made by the District of Columbia; or

(C) is brought under chapter 23 of title 16.

(4) Immediately following the expiration of the eighteen-month period beginning on such effective date, the court has jurisdiction (regardless of the amount in controversy) of any civil action or other matter, at law or in equity, brought under—

(A) chapter 3 of title 21 (relating to gifts to minors);

(B) chapter 5 of title 21 (relating to hospitalization of the mentally ill);

(C) chapter 7 of title 21 (relating to property of the mentally ill);

(D) chapter 11 of title 21 (relating to commitment and maintenance of substantially retarded persons);

(E) chapter 13 of title 21 (relating to appointment of committees for alcoholics and addicts);

(F) chapter 15 of title 21 (relating to appointment of conservators); or

(G) chapter 3, 7, 11, 13, or 15 of title 21 in the United States District Court for the District of Columbia and not completed in that court before the expiration of such eighteen-month period.

(5) Immediately following the expiration of the thirty-month period beginning on such effective date, the court has jurisdiction (regardless of the amount in controversy)—

(A) of any matter (at law or in equity)—

(i) brought under chapter 29 of title 16 (relating to partition of property and assignment of dower);

(ii) which would have been within the jurisdiction of the Orphans Court of Washington County, District of Columbia before June 21, 1870;

(iii) relating to the execution or validity of wills devising real property within the District of Columbia, and of wills and testaments properly presented for probate in the court, and the admission to probate and recording of those wills;

(iv) relating to the proof of wills of either personal or real property and the revocation of probate of wills for cause;

(v) involving the granting and revocation for cause of letters testamentary, letters of administration, letters ad colligendum and letters of guardianship, and the appointment of successors to persons whose letters have been revoked;

(vi) involving the hearing, examination, and issuance of decrees upon accounts, claims, and demands existing between executors or administrators and legatees or persons entitled to a distributive share of an intestate estate, or between wards and their guardians;

(vii) involving the enforcement of the rendition of inventories and accounts by executors, administrators, collectors, guardians, and trustees required to account to the court;

(viii) involving the enforcement of distribution of estates by executors and administrators and the payment or delivery by guardians of money or property belonging to their wards; or

(ix) otherwise within the probate jurisdiction of the United States District Court for the District of Columbia on the day before such effective date; and

(B) any matter (at law or in equity) described in subparagraph (A) which was begun in the United States District Court for the District of Columbia and not completed in that court before the expiration of such thirty-month period.

(6) Immediately following the expiration of the thirty-month period beginning on such effective date, the court has jurisdiction (regardless of the amount in controversy) of any civil action or other matter, at law or in equity, brought in the District of Columbia.

(b) The Superior Court does not have jurisdiction over any civil action or other matter (1) over which exclusive jurisdiction is vested in a Federal court in the District of Columbia, or (2) over which jurisdiction is vested in the United States District Court for the District of Columbia under section 11-501 (relating to civil actions or other matters begun in such court before the expiration of the thirty-month period beginning on the effective date of the District of Columbia Court Reorganization Act of 1970). (July 29, 1970, Pub. L. 91-358, § 111, title I, 84 Stat. 484; Dec. 7, 1970, Pub. L. 91-530, § 2(a)(1), 84 Stat. 1390.)

REFERENCE IN TEXT

For the effective date of the District of Columbia Court Reorganization Act of 1970, referred to in text, see notes preceding § 11-101.

other valuable thing, so lost and paid or delivered, or any part thereof, or the full value thereof, by a civil action, from the winner thereof, with costs. If the person who loses the money or other thing, does not, within three months actually and bona fide, and without collusion, sue, and with effect prosecute, therefor, any person may sue for, and recover treble the value of the money, goods, chattels, and other things, with costs of suit, by a civil action against the winner, one-half to the use of the plaintiff, the remainder to the use of the District of Columbia. (Dec. 23, 1963, 77 Stat. 582, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–702 (9 Ann, ch. 14, § 2, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 690; Md. Act 1781, ch. 16, § 1; Comp. Stat. D.C., p. 244, § 13; R.S., D.C., § 837; Md. Act 1777, ch. 6, § 1).

The amount of "twenty-six dollars and sixty-seven cents" is rounded to the amount of $25, which is the approximate American equivalent of the British sum specified by the original statute.

The term "civil action" is substituted for "action of debt" to conform with rule 2 of the Federal Rules of Civil Procedure and of the civil rules of the Court of General Sessions; and words "in which actions or suits no more than one imparlance shall be allowed; in which actions it shall be sufficient for the plaintiff to allege, that the defendant or defendants are indebted to the plaintiffs, or received to the plaintiff's use, the monies so lost and paid, or converted the goods won by the plaintiff's to the defendant's use, whereby the plaintiff's action accrued to him, according to the form of this section, without setting forth the special matter" are omitted as covered or superseded by, or inconsistent with, rules of pleading as set forth in rules of court. See, particularly, rules 7–9 of the Federal Rules of Civil Procedure, and of the civil rules of the Court of General Sessions, and rule 4 of the small claims rule of Court of General Sessions.

The provision that the action may "be prosecuted in any court of record" is omitted as inconsistent with provisions governing civil jurisdiction of the District Court and the Court of General Sessions. See sections 11–521 (a)(1), 11–961, and 11–1341 herein.

Changes are made in phraseology.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–1703, 16–1704.

§ 16–1703. Relief from further penalty upon discovery and repayment of losses

Upon the discovery and repayment of the money or other thing to be discovered and repaid as provided by section 16–1702, the person who so discovers and repays shall be acquitted, indemnified, and discharged from any further or other punishment, forfeiture, or penalty, that he may have incurred by the playing for, or winning, the money or other thing so discovered and repaid. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–703 (9 Ann, ch. 14, § 4, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 691; Comp. Stat. D.C., p. 244, § 15).

Minor changes are made in phraseology.

§ 16–1704. Cheating at gambling

Whoever, at any one time or sitting, by fraud or false pretense, while playing any game, or while having a share in a wager played for, or while betting on the sides or hands of persons who play, wins, or acquires to himself or to any other person, above the sum or value of $25, shall, upon conviction of the offense, forfeit five times the value of the sum of money or other thing so won, and shall be deemed infamous.

The penalty prescribed by this section may be recovered in a civil action by the persons specified by, and in the manner provided by, section 16–1702. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88–241, § 1, eff. Jan. 1, 1964.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 16–704 (9 Ann, ch. 14, § 5, 1710; Kilty's Rept., p. 248; Alex. Brit. Stat., p. 691; Md. Act 1780, ch. 23, § 3; Md. Act 1781, ch. 16, § 1; Comp. Stat. D.C., p. 245, § 16).

Surplusage is omitted, and changes are made in phraseology.

Chapter 19.—HABEAS CORPUS

AMENDMENT

1970—Section 145(h)(2) of Act July 29, 1970, Public Law 91–358 amended analysis relating to item 16–1901 to read as above set out.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 11–921.

§ 16–1901. Petition; issuance of writ

(a) A person committed, detained, confined, or restrained from his lawful liberty within the District, under any color or pretense whatever, or a person in his behalf, may apply by petition to the appropriate court, or a judge thereof, for a writ of habeas corpus, to the end that the cause of the commitment, detainer, confinement, or restraint may be inquired into. The court or the judge applied to, if the facts set forth in the petition make a prima facie case, shall forthwith grant the writ, directed to the officer or other person in whose custody or keeping the party so detained is returnable forthwith before the court or judge.

(b) Petitions for writs directed to Federal officers and employees shall be filed in the United States District Court for the District of Columbia.

(c) Petitions for writs directed to any other person shall be filed in the Superior Court of the District of Columbia. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(h)(1); 84 Stat. 560.)

AMENDMENT

1970—Section 145(h)(1) of Act July 29, 1970, Public Law 91–358 amended section—

(A) by striking out "the United States District Court for the District of Columbia" in the first sentence and inserting in lieu thereof "the appropriate court";

(B) by inserting "(a)" immediately before "A person" and by adding after and below the last sentence new subsections (b) and (c) to read as above set out; and

(C) by striking out "to District Court" in the section heading.